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16 Attorneys for Plaintiffs and the Plaintiff Class

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA

19 DONALD RAY LILLEY, JARVIS
20 JOHNSON, and DANIEL
MALLORY, individually and on
21 behalf of all others similarly situated,
22 Plaintiffs,

23 vs.

24 COUNTY OF ALAMEDA; BOARD
OF SUPERVISORS OF ALAMEDA
COUNTY; ALAMEDA COUNTY
25 SOCIAL SERVICES AGENCY; and
LORI COX, in her official capacity as
26 Director of the Alameda County
Social Services Agency,
27 Defendants.
28

Case No.:

CLASS ACTION

**COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF**

(Fed. R. Civ. P. 23(b)(2))

INTRODUCTION

1. Plaintiffs Donald Ray Lilley, Jarvis Johnson, and Daniel Mallory bring this action individually and on behalf of a class of persons (the “Class” or the “Plaintiff Class”) consisting of all current and future applicants for regular and expedited CalFresh (Food Stamp) benefits from defendant Alameda County (“Alameda County” or the “County”). This suit challenges Alameda County’s widespread failure to timely determine eligibility for CalFresh (Food Stamp) benefits. The ongoing and persistent failure and/or refusal of the named Defendants to ensure, on a county-wide basis, the processing of CalFresh applications within the time limits mandated by federal and state law has resulted and continues to result in substantial delays in providing CalFresh benefits to thousands of low-income households in Alameda County critically in need of this assistance to help them feed themselves and their families and provide them with adequate food and nutrition. Indeed, the County’s failure to comply with federal and state mandated timelines has resulted in a backlog of 10,657 pending applications as of July 2015. As a result, needy Alameda County residents are facing undernutrition and hunger, homelessness, and serious health risks.

2. CalFresh applications must be processed, and benefits issued to those eligible, as soon as possible, but no later than 30 days after the date a person submits an application. 7 U.S.C. § 2020(e)(3); 7 C.F.R. § 273.2(a), (g)(1), (3); Cal. Welf. & Inst. Code § 18911(a). Applicants in emergency situations with very low-income and few resources may qualify for expedited food stamps. 7 U.S.C. § 2020(e)(9); 7 C.F.R. § 273.2(i); MPP § 63-301.51.¹ The County must issue these benefits to eligible persons within three calendar days. Cal. Welf. & Inst. Code § 18914(b) (implementing 7 C.F.R. § 273.2(i)); MPP § 63-301.531(a)).

¹ “MPP” refers to the California Department of Social Services’ Manual of Policies and Procedures containing the CalFresh regulations. The MPP or Manual is found at: <http://www.dss.cahwnet.gov/ord/PG303.htm> (last visited September 24, 2015).

3. In violation of these mandates, Alameda County is processing regular and emergency applications well beyond the respective 30-day and three-day time limits. In July 2015, the most recent month for which data are publicly available, 24.7% of all regular (30-day) CalFresh applications were decided late due to County delay. Meanwhile, applications for emergency assistance are processed late at least 13% of the time and County policies ensure that the actual rate of late payment of emergency benefits is far greater.

4. Plaintiff Donald Ray Lilley has been waiting for 52 days for the County to process his application and without the CalFresh benefits, is not getting enough food to eat. In desperate need of food, on September 21, 2015, Plaintiff Jarvis Johnson filed a request for expedited service on his CalFresh application. Eight calendar days later, the County has not yet issued a decision or benefits. This delay is five days longer than the California- and federal-mandated timeframe. Plaintiff Daniel Mallory's application for expedited food stamps has been lingering unprocessed for 25 days and the County still has not issued him benefits. All three Plaintiffs are eligible for food stamps, and in all three circumstances, the County unlawfully delayed the processing of their applications and issuance of benefits.

5. The County has a longstanding policy, pattern, practice, and custom of failing and refusing to timely process CalFresh applications. Plaintiffs therefore seek declaratory and preliminary and permanent injunctive relief on behalf of themselves and, in accordance with Fed. R. Civ. P. 23(a) and 23(b)(2), on behalf of the Class of similarly situated CalFresh applicants, to remedy Defendants' violations of their rights under federal and state law and to enjoin Defendants' failure and/or refusal to process CalFresh applications, and to provide CalFresh benefits to eligible applicants, on a timely basis.

JURISDICTION

6. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1367. Plaintiffs' action for declaratory and injunctive relief is authorized by 28 U.S.C. §§ 1343, 2201, and 2202 and by Fed. R. Civ. P. 57 and 65.

1 7. Plaintiffs' claim for violations of California state law concerns the same
2 actions and omissions that form the basis of Plaintiffs' claim under federal law such that the
3 California state law claim is part of the same case or controversy. This Court therefore has
4 supplemental jurisdiction over the California state law claim pursuant to 28 U.S.C. § 1367.

5
6 VENUE AND INTRADISTRICT ASSIGNMENT

7 8. Venue is proper pursuant to 28 U.S.C. § 1391(b) because a substantial part
8 of the events or omissions giving rise to the claims herein occurred in this District, and
9 because all Defendants named herein reside in, maintain offices in, or are responsible for
10 enforcing the laws relevant to this litigation in this District.

11 9. In accord with Local Rule 3-2 and Local Rule 3-5, this civil action should be
12 assigned to the San Francisco Division or to the Oakland Division of this Court because a
13 substantial part of the events or omissions which give rise to the claims herein have
14 occurred and are occurring in Alameda County.

15
16 RIGHT OF ACTION

17 10. Title 42 of the United States Code, § 1983 confers a right of action to
18 enforce the federal statutes cited herein. California Code of Civil Procedure § 1085 confers
19 a right of action to enforce the California state statutes cited herein.

20
21 PARTIES

22 11. Plaintiff Donald Ray Lilley is a resident of the City of Livermore, in the
23 County of Alameda and brings this action both individually and on behalf of the Plaintiff
24 Class.

25 12. Plaintiff Jarvis Johnson is a resident of the City of Oakland, in the County of
26 Alameda and brings this action both individually and on behalf of the Plaintiff Class.

27 13. Plaintiff Daniel Mallory is a resident of the City of Berkeley, in the County
28 of Alameda and brings this action both individually and on behalf of the Plaintiff Class.

1 14. Alameda County is a political body of the State of California and, pursuant
2 to federal and state law, is required to oversee and monitor the Social Services Agency.

3 15. Defendant Board of Supervisors of Alameda County (the “Board of
4 Supervisors”) is the legislative body charged by law with managing the County
5 government.

6 16. Defendant Alameda County Social Services Agency (the “Agency”) is the
7 local public agency responsible for administering Alameda County’s CalFresh program
8 within the County, including ensuring timely processing of CalFresh applications.

9 17. Defendant Lori Cox is the Director of the Agency. Plaintiffs sue Ms. Cox in
10 her official capacity only. Ms. Cox is responsible for the enforcement, operation, and
11 execution of laws pertaining to the Agency’s administration of the CalFresh program,
12 including the timely processing of CalFresh applications.

13 18. At all relevant times, all four of the named Defendants were, are, and have
14 been acting in concert with respect to the administration of the CalFresh program such that
15 each such Defendant is, was, and has been at all relevant times acting as the agent of each
16 of the other Defendants with reference to the matters alleged herein. To obtain complete
17 relief and to avoid the need for the filing of a multiplicity of legal actions, Plaintiffs and the
18 Class have sued all four of the named Defendants herein for declaratory and injunctive
19 relief.

20
21 FACTS PERTAINING TO EACH NAMED PLAINTIFF

22 19. Plaintiff Donald Ray Lilley is disabled and has a current application pending
23 for Supplemental Security Income (SSI). He currently receives General Assistance
24 benefits. After paying rent, he does not have enough money left to pay for food with his
25 meager public assistance grant. While waiting for food stamps, there have been days when
26 he does not have enough to eat and he has experienced health problems due to poor
27 nutrition. Mr. Lilley applied for CalFresh benefits on August 7, 2015. The County sent
28

1 him just one notice, informing him that his caseworker has changed. As of the date of
2 filing of this complaint, the County has not issued him the benefits to which he is entitled.

3 20. Plaintiff Jarvis Johnson is a 53-year old man with disabilities. He receives
4 General Assistance benefits of \$336 per month. After paying for rent and utilities, he has
5 \$10 to survive on per month. Desperately needing additional assistance, he applied for
6 CalFresh benefits on September 10, 2015. After learning he was eligible for expedited
7 benefits, Mr. Johnson requested expedited Food Stamps from the County on September 21,
8 2015. More than one week later, the County still has not issued Mr. Johnson benefits.

9 21. Plaintiff Daniel Mallory is unemployed, after losing a job for which he is
10 owed unpaid wages. Without any income to pay for food, he applied for expedited
11 CalFresh with the County on September 3, 2015. Despite providing identification and
12 indicating that his housing costs exceed his income and resources combined, the County has
13 not issued him expedited food stamps. Twenty-five days later, he is still waiting for
14 expedited CalFresh assistance.

15
16 CLASS DEFINITION AND CLASS ACTION ALLEGATIONS

17 22. Plaintiffs Donald Ray Lilley, Jarvis Johnson, and Daniel Mallory seek to
18 represent the Class consisting of current and future applicants for CalFresh (Food Stamp)
19 benefits from Alameda County. As such, this action is maintainable as a class action
20 pursuant to Rule 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure.

21 23. The requirements of Rule 23(a)(1) are met in that the Class is so numerous
22 that joinder of all members is impracticable. According to data reported by the County to
23 the California Department of Social Services ("CDSS"), the number of new applicants for
24 CalFresh benefits has exceeded 3,900 in each month of 2015. The County's most recent
25 reported data show that as of the end of July 2015, 10,657 applications are pending with no
26 decision rendered. The Class is also fluctuating, in that as they apply for benefits, new
27 people regularly will qualify to be members of the Class.

1 24. In accordance with the requirements of paragraph (2) of Fed. R. Civ. P.
2 23(a), members of the Class share common issues of law and fact, including whether
3 Alameda County has a policy, pattern, practice, and custom of failing and/or refusing to
4 process regular and expedited CalFresh (Food Stamp) applications within statutorily
5 mandated time periods and whether any such policy, pattern, practice, or custom violates
6 federal or state law.

7 25. The claims of the named Plaintiffs are typical of the claims of the class they
8 represent (within the meaning of paragraph (3) of Rule 23(a)). Plaintiff Donald Ray Lilley
9 applied for food stamps and has experienced a lengthy and unlawful delay by the County in
10 the processing of his application and issuance of benefits. Plaintiffs Jarvis Johnson and
11 Daniel Mallory applied for and are eligible for expedited food stamps, and both have
12 experienced the County's failure to timely process their applications, going without the
13 prompt emergency assistance to which they are entitled.

14 26. In accordance with paragraph (4) of Fed. R. Civ. P. 23(a), Plaintiffs will
15 fairly and adequately protect the interests of the Class. Plaintiffs know of no conflict of
16 interest between any of themselves and the Class or any Class members and are likewise
17 unaware of any conflict of interest between or among any of the Class members.

18 27. Plaintiffs are represented by experienced counsel who will adequately
19 represent the interests of the Class.

20 28. Defendants have acted, and continue to do so, on grounds generally
21 applicable to the Class that Plaintiffs represent, thereby rendering appropriate injunctive
22 and declaratory relief for the Class as a whole in accordance with paragraph (2) of Fed. R.
23 Civ. P. 23(b).

24
25 STATUTORY AND REGULATORY BACKGROUND

26 29. The federal Supplemental Nutrition Assistance Program ("SNAP"), formerly
27 known as the Food Stamp Program, was initiated in 1964 pursuant to the Food Stamp Act
28

1 (the Act).² The express purpose of SNAP is to “safeguard the health and well-being of the
 2 Nation’s population by raising levels of nutrition among low-income households.”
 3 7 U.S.C. § 2011. SNAP provides federally-funded benefits to eligible low-income
 4 households to help them purchase food. *Id.* § 2011 *et seq.*

5 30. SNAP is administered nationally by the United States Department of
 6 Agriculture (“USDA”), which is responsible for issuing regulations consistent with the Act.
 7 *Id.* § 2013(a), (c). States that participate in the program designate a state agency to
 8 administer the program at the state level. *Id.* § 2012(t). State agencies must administer the
 9 program in compliance with the Act and its implementing regulations. *Id.* § 2020(e).

10 31. In California, CDSS is the designated state agency responsible for
 11 administering SNAP. California has delegated the operation of its food stamp program to
 12 county governments, and each county welfare department must administer the Food Stamp
 13 program, in accordance with CDSS rules and regulations. Cal. Welf. & Inst. Code
 14 §§ 10604-10605, 18902. California has named its SNAP program “CalFresh.”

15 32. To be financially eligible for CalFresh, a household, defined as a group of
 16 people who purchase and prepare food together, must have income below 100% of the federal
 17 poverty level after deductions that account for housing, dependent care, and medical expenses,
 18 among other exclusions and deductions. 7 U.S.C. § 2014(c)(1). As of 2015, that figure for a
 19 family of three is \$20,090 per year or \$1,675 per month. *Id.*; 80 Fed.Reg. 3236-37 (Jan. 22,
 20 2015). Eligible households that do not have a member who is over age 60 or who is
 21 considered disabled must also have income, prior to deductions, less than 200% of the federal
 22 poverty level. 7 U.S.C. §§ 2014(a), (c)(2); 7 C.F.R. § 273.2(j)(2)(C); Cal. Welf. & Inst. Code
 23 §18901.5; All County Letter (ACL) 14-56 (August 22, 2014) at page 2. This amount is
 24 currently \$40,180 per year or \$3,349 monthly for a family of three. *See* 80 Fed. Reg.
 25 3236-37.

26

27

28 ² On June 18, 2008, Congress amended the Food Stamp Act by renaming the Food and Nutrition Act of 2008. Pub. L. No. 110-246, § 4001.

33. Pursuant to federal law, counties must process food stamp applications and issue benefits to those eligible no later than 30 days after the date of application. 7 U.S.C. § 2020(e)(3); 7 C.F.R. § 273.2(a), (g)(1), (3).

34. Under federal law, expedited food stamps benefits must be provided no later than seven days following the date of application when eligible applicants have extremely low income and resources or cannot meet their monthly housing expense. 7 U.S.C. § 2020(e)(9); 7 C.F.R. § 273.2(i)(1), (i)(3)(i). Federal law permits a state to adopt a shorter time frame, and California has done so—benefits must be issued to households eligible for expedited service within three calendar days of application. Cal. Welf. & Inst. Code § 18914(b); California Department of Social Services Manual of Policies and Procedures (MPP) § 63-300.1.

35. State law further mandates that aid to the “needy and distressed” must be provided “promptly and humanely.” Cal. Welf. & Inst. Code § 10000.

STATEMENT OF FACTS

County Non-Compliance with Regular CalFresh Processing Timeframes

36. CDSS requires each county in the State of California to report its CalFresh application statistics on a monthly basis. According to data reported by Alameda County, on average 19.4% of its applications were processed late due to County delay in the past year. In the most recent month for which data is available, July 2015, of the applications approved, approximately 21.5% were approved late due to County delay. Of those applications denied, approximately 30.5% were denied after the 30 day deadline due to County delay.

37. The following table shows the degree of late processing over the most recent twelve months for which data is available:

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Table 1

CDSS DFA 296 – Alameda Data for Regular Processing of CalFresh Applications³

Month	Number of Processed Applications ⁴	Number of Late Approved Applications ⁵	Number of Late Denied Applications ⁶	Percentage of Total Late Applications ⁷
August 2014	3,739	293	286	15.5%
September 2014	3,738	293	358	17.4%
October 2014	4,061	329	392	17.8%
November 2014	3,026	264	263	17.4%
December 2014	3,246	292	263	17.1%
January 2015	3,385	317	309	18.5%
February 2015	3,134	327	276	19.2%
March 2015	3,944	443	380	20.9%
April 2015	3,788	411	286	18.4%
May 2015	3,806	438	446	23.2%
June 2015	4,310	561	327	22.9%
July 2015	4,722	653	518	24.7%
12 Month Average⁸	3,742	385	342	19.4%⁹

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³ All tables and charts are created using the Alameda County data from the CDSS Monthly DFA 296 Report (DFA 296): <http://www.cdss.ca.gov/research/PG353.htm>

⁴ “Number of Total Applications” is calculated by adding “Applications approved” (Column 7), “PACF Applications denied” (Column 10), and “NACF Applications denied” (Column 11).

⁵ “Number of Late Approved Applications” is calculated by adding “PACF Applications approved in over 30 days (CWD caused)” (Column 8) and “NACF Applications approved in over 30 days (CWD caused)” (Column 9).

⁶ “Number of Late Denied Applications” is calculated by adding “PACF Applications denied in over 30 days (CWD caused)” (Column 12) and “NACF Applications denied in over 30 days (CWD caused)” (Column 13).

⁷ “Percentage of Total Late Applications” is calculated by adding “Number of Late Approved Applications” and “Number of Late Denied Applications” and dividing the total by “Number of Total Applications.”

⁸ “12 Month Average” is the average of each total over the last 12 months.

⁹ See footnote 5, *supra*.

38. Alameda County ranked worst of the 58 counties in the State, in timely processing both approved and denied applications, according to a CDSS report of average application processing times from August 2014 to July 2015.¹⁰

County Non-Compliance with Expedited CalFresh Processing Timeframes

39. For expedited service benefits, counties report data to CDSS on a quarterly basis. Data reported by Alameda County show that for April through June 2015, 10.4% of applications for expedited CalFresh (emergency food stamps) were paid late due to County delay, and for the period from January through March 2015, 14.6% of emergency applications were processed late due to County delay.¹¹

40. The County has a Food Stamp Handbook that provides guidance to Agency staff. Handbook Section 63-03.02 states, “The 3-day timeframe shall begin the day the ET [Eligibility Technician] identifies that the household meets the criteria for ES [Expedited Service] and not on the date the application was filed.” This proviso directly violates the requirements in Cal. Welf. & Inst. Code § 18914(b) and MPP §§ 63-301.531(a) & 63-301.522, which provide that the three-day processing time for expedited benefits begins on the date the application is submitted (*i.e.*, filed).

41. According to this same Handbook Section, the County’s data-keeping system is “not programmed correctly to report statistics of late [expedited service] determinations. Until further instructions are provided...issue the benefits as soon as administratively possible.” Therefore, on information and belief, the extent of the problem with untimely processing of expedited CalFresh (Food Stamp) benefit applications is even worse than the data reported by the County to the State.

¹⁰ These statistics are from a comparison of counties’ 12 month averages for the period August 2014 to July 2015, at <http://www.cdsscounties.ca.gov/foodstamps/res/pdf/Regular.pdf>.

¹¹ This number was calculated by adding column 4a2 on p. 6 of the DFA 296X to column 4a3 on p. 6 of the DFA 296X, and then dividing by the total number of expedited services applications approved, at column 4a, on p. 5 of the DFA 296X.

The Problem Has Resulted in a Serious Backlog of Applications

42. Meanwhile, Alameda County data show the number of pending applications as of its May, June, and July 2015 reports was 11,837, 11,541, and 10,657, respectively. The backlog continues to exceed over *two times* the average number of applications received each month.

COMMON ALLEGATIONS REGARDING INJUNCTIVE AND DECLARATORY
RELIEF

43. By reason of the foregoing, an actual and present controversy has arisen and now exists between Plaintiffs and the Class, on the one hand, and Defendants, on the other hand. With respect to such controversy, Plaintiffs and the Class contend that Defendants are violating their respective rights under the laws of the United States and the State of California by failing and/or refusing timely to process CalFresh applications and by failing and/or refusing timely to provide CalFresh benefits to eligible households within 30 days of the date of the application or within three days of the date of the application for those eligible households entitled to expedited services, while Plaintiffs and the Class are informed and believe and on that basis allege that each of Defendants disputes and denies each of the foregoing contentions.

44. A declaration by this Court that Defendants have engaged in a pattern and practice of violating Plaintiffs' and the Class's rights under federal and state law to the timely processing of their CalFresh applications and to the timely receipt of their CalFresh benefits is therefore necessary and appropriate at this time.

45. Defendants' failure and refusal to comply with the time requirements of federal and state law for processing CalFresh (Food Stamp) benefit applications and for providing such benefits to eligible applicants has proximately resulted and, unless restrained and enjoined, will continue to result in imminent and irreparable harm to Plaintiffs and members of the Plaintiff Class. By continuing to fail and/or refuse to make timely application decisions, Defendants' are delaying needed food assistance to Plaintiffs

1 and Class members, forcing Plaintiffs and Class members to choose between meeting their
2 nutritional needs or other basic needs. The problem has grown for over two years and
3 threatens to continue to grow, causing harm to Plaintiffs and Class members absent
4 injunctive relief.

5 46. Plaintiffs and members of the Class have no plain, adequate, or complete
6 remedy at law to address the failure to timely process applications described herein.
7 Plaintiffs and the Plaintiff Class therefore seek injunctive relief restraining Defendants from
8 engaging in the unlawful acts described herein.

9 10 **FIRST CLAIM FOR RELIEF**

11 **(Violation of federal law by failing to provide timely CalFresh benefits)**

12 47. Plaintiffs re-allege and incorporate by reference each and every allegation
13 contained in paragraphs 1 through 46.

14 48. While acting under color of law, Defendants have developed and maintained
15 a policy, pattern, practice, and custom of failing and/or refusing to determine CalFresh
16 (Food Stamp) eligibility and issue CalFresh (Food Stamp) benefits within thirty days of
17 application and within three calendar days of application for expedited benefits, thereby
18 depriving Plaintiffs and members of the Class of their respective rights under 7 U.S.C.
19 §§ 2020(e)(3) and (e)(9); 7 C.F.R. §§ 273.2(a)(2), (g)(1), and (i)(3)(i).

20 21 **SECOND CLAIM FOR RELIEF**

22 **(Violation of state law by failing to provide timely CalFresh benefits)**

23 49. Plaintiffs re-allege and incorporate by reference each and every allegation
24 contained in paragraphs 1 through 46.

25 50. Defendant's policy, pattern, practice, and custom of failing and/or refusing
26 to determine eligibility for CalFresh (Food Stamp) benefits within thirty days of application
27 and within three calendar days of application for expedited benefits violate the rights of
28

1 Plaintiffs and members of the Plaintiff Class under Cal. Welf. & Inst. Code §§ 10000,
2 18914(b); and MPP §§ 63-300.1, 63-301.531(a) & 63-301.522.

3
4 PRAYER FOR RELIEF

5 WHEREFORE, Plaintiffs and the Plaintiff Class respectfully request that this Court
6 enter judgment in their favor and against Defendants, and each of them, as follows:

7 (a) Assert jurisdiction over this action;

8 (b) Certify this action as a class action on behalf of all current and future
9 applicants for regular and expedited CalFresh (Food Stamp) benefits from Alameda
10 County, pursuant to Rule 23(a) and Rule 23(b)(2) of the Federal Rules of Civil
11 Procedure;

12 (c) Grant a temporary restraining order and preliminary injunction *pendente lite*
13 and a permanent injunction thereafter restraining and enjoining Defendants, and
14 each of them and all persons acting in concert with any of them, from failing and/or
15 refusing to process applications of, and from failing and/or refusing to issue
16 CalFresh benefits to, Plaintiffs and the Class within federal- and state-mandated
17 time frames;

18 (d) Declare that Defendants' policy, pattern, practice, and custom of failing
19 and/or refusing to determine regular CalFresh applications within 30 days of the
20 date of application and expedited CalFresh applications within three days of the date
21 of application violate the rights of Plaintiffs and the Class under federal and state
22 law and further declare that Defendants' further policy, pattern, practice, and custom
23 of failing and/or refusing timely to provide CalFresh benefits to eligible
24 impoverished households in Alameda County within the time mandated under
25 federal and state law likewise violate the rights of Plaintiffs and the Class
26 thereunder;

1 (e) Award reasonable costs and expenses incurred in the prosecution of this
2 action, including reasonable attorneys' fees and costs pursuant to 42 U.S.C. §§ 1988
3 and 1920 and Cal. Code of Civil Procedure § 1021.5; and

4 (f) Grant any and such other and further relief as the Court may deem just and
5 proper.

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7 Dated: September 29, 2015.

8 Respectfully Submitted:

9 THE PUBLIC INTEREST LAW PROJECT

10 WESTERN CENTER ON LAW & POVERTY

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12 PILLSBURY WINTHROP SHAW PITTMAN LLP

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15 By _____
Lauren Hansen

16 Attorneys for Plaintiffs
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